

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

ZAID AL AZAWI, ERNESTO ALANIS, JR., JON ALLEN, REYNALDO ARREAGA, RONALD CHASE, CHRISTIAN COLON, GREGORY DOOLEY, CODY EDGE, RICHARD ELLIOTT, JUAN GARCIA, ROBERT GARDNER, GARNETT GERLT, PAUL GRANGER, JONATHAN GUAJARDO, CHIMYA JOHNSON, DANA JOHNSON, MAN LEUNG, WELDON NIX, CESAR POSADAS, GUSTAVO RODRIGUEZ, EDWARD RODRIGUEZ, ALEJANDRO SOSA-DELGADO, JOHN SPENCE, ANDREW UMBAUGH, JOSEPH WALDROP, BILL ARELLANO, JIMMY BAINES, ROGER GORAS, KENNETH HAYNES, TONY MALLARD, XAVIER MCCOOK, JOBY VEGA, AND MARVIN EDWARDS,

Plaintiffs,

v.

DIRECTV, INC., DIRECTV, LLC, MASTEC NORTH AMERICA, INC., AND MULTIBAND CORP.,

Defendants.

Case No. 4:14-cv-02962

**Electronically Filed**

**DEFENDANT MASTEC NORTH AMERICA, INC.'S MOTION TO DISMISS  
PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendant MasTec North America, Inc. ("MasTec") hereby moves, pursuant to Fed. R. Civ. Proc. 12(b)(6), to dismiss the First Amended Complaint ("FAC") as pled by Plaintiffs Ernesto Alanis, Jr., Jon Allen, Reynaldo Arreaga, Christian Colon, Juan Garcia, Jr., Robert Gardner, Garnett Gerlt, Jonathan Guajardo, Weldon Nix, Cesar Posadas, Edward Rodriguez, Bill Arellano, Roger Goras, Kenneth Haynes and Tony Mallard (collectively, the "MasTec

Plaintiffs”), as asserted against MasTec. This Motion is brought on the following three distinct grounds:

- (1) Plaintiffs Alanis, Allen, Arreaga, Colon, Gardner, Goras, Guajardo, Haynes and Mallard’s claims as pled under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, are time-barred in their entirety. *Id.*, § 255(a).
- (2) Plaintiffs Allen, Colon, Gardner, Gerlt, Haynes, Nix and Posadas’s minimum wage claims as pled under the FLSA are without merit inasmuch as the allegations of the FAC confirm that they each received an effective hourly wage in excess of the applicable minimum wage rate under the FLSA.
- (3) All of the MasTec Plaintiffs’ claims for relief lack merit inasmuch as they have failed to plead facts sufficient to support a reasonable inference that MasTec was ever their employer for purposes of the FLSA.

The grounds for this Motion are further explained in the attached Memorandum of Law, which is incorporated herein.

DATED: June 15, 2015

Respectfully submitted,

**REED SMITH LLP**

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*Attorneys for Defendant MasTec North  
America, Inc.*

**CERTIFICATE OF CONFERENCE**

The undersigned, counsel for Defendant MasTec North America, Inc. in the above-captioned and numbered case, states that the parties have conferred with each other and the Court regarding the foregoing Motion and Plaintiffs oppose the relief sought by Defendant MasTec North America, Inc.

Dated: June 15, 2015

By: /s/ Christina T. Tellado  
Christina T. Tellado

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 15th day of June, 2015, I electronically filed the foregoing document with the Clerk of Court using the CMF/ECF system, which will send notification of such filing to all counsel of record.

Dated: June 15, 2015

By: /s/ Christina T. Tellado  
Christina T. Tellado